

// A regular meeting of the Council of the City of Lynchburg was held on the 8th day of August, 2006, at 7:30 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. Vice Mayor Dodson gave the Invocation. The Pledge of Allegiance was led by the Police Officer in attendance. The following Members were present:

Present: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Absent: 0

// Prior to beginning the meeting, Mayor Foster advised that Agenda Item #14 regarding an Ordinance to amend the City Code relating to panhandling within the City limits had been removed from the agenda. Mayor Foster then read the following statement regarding the proposed Pedcor Investments, Inc., Development, Logan's Landing:

Since the July 19 public meeting at Heritage Elementary School, which was held to receive information on the proposed Pedcor Investments, Inc. development, Logan's Landing, City Council has heard from a large number of citizens, particularly from the Richland Hills neighborhood, expressing deep concerns about and opposition to the development. While individual Council members have been involved with this issue to varying degrees, today was the first opportunity for Council to meet as a body and discuss the matter with staff and legal counsel.

As recommended by staff, City Council expressed its unanimous opposition to this project on March 14, 2006. That opposition has not wavered. Subsequent to Council's March action, neither Council nor staff has acted in any manner to support the proposed project.

City Council is committed to taking any reasonable steps open to it to stop the Logan's Landing development.

This situation is, however, governed by both federal and state law that Council is obligated to obey. Each Council member has taken an oath of office to uphold the Constitutions of the United States and the Commonwealth and to uphold their laws. It would be irresponsible to take any actions that would violate that oath or that could potentially cost the citizens of Lynchburg hundreds of thousands of dollars in legal fees, fines, or damages.

Because of the threat of litigation, it is prudent that Council not publicly discuss specific steps that it might take to address the proposed Pedcor development.

Nevertheless, Council has taken the following steps that we can share with the public:

- Staff has been directed to contact Pedcor and to explore a way to provide incentives for Pedcor to abandon the project or move to another more acceptable site in the City;
- The City Manager and City Attorney have been directed to write a letter to VHDA requesting that tax credits not be awarded to the project due to the expressed opposition of City Council and certain inconsistencies in VHDA's scoring of the project for tax credit allocation;
- City Council has discussed and reinforced with staff its responsibilities to conduct a full and careful review of the Logan's Landing site plan to ensure its full compliance with all city development standards.

In addition to these steps that we can disclose, and others that we cannot, staff has drafted an amendment to the Zoning Ordinance that will allow both the Planning Commission and City Council to discuss the appropriateness of ordinance provisions that have been in the Zoning Ordinance since 1931 allowing residential development in business zones. At this point, it would not be appropriate to speculate on the possible impact on the Logan's Landing project should the Zoning Ordinance be amended to restrict by-right residential development in business zones.

A public hearing before the Planning Commission is scheduled for tomorrow afternoon. That hearing will proceed as advertised, however, legal counsel has advised that in order to ensure that all procedural requirements are strictly complied with and to put the City in the strongest possible position should its actions be challenged, the Planning Commission should adopt a new formal initiating resolution. Accordingly, at tomorrow's Planning Commission meeting, after public comment; the Commission will be asked to formally initiate the ordinance amendment process by adopting a resolution specifically worded to strictly comply with all legal requirements.

City Council will meet on Friday, August 11, at 3:00 p.m. in Council Chambers to follow up on the Planning Commission's action.

On behalf of City Council, I want to thank all of the citizens who have contacted us with their concerns. I assure you that we take them seriously and share your goal of protecting your neighborhood. I also want to thank City staff for the amount of time that it has spent on this matter and for its responsiveness to citizen and Council inquiries and for drafting the proposed Zoning Ordinance amendment on short notice.

This is an evolving process and I ask for your patience and your understanding regarding the reasons why we cannot publicly discuss all potential actions that City Council might undertake.

Thank you.

// Copies of the minutes of the July 11, 2006 (two meetings) meetings, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Garrett, seconded by Council Member Seiffert, Council by the following recorded vote approved the minutes as presented:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of Airport – General, Resolution #R-06-087 approving the sale and conveyance of several parcels of City-owned property containing 27 acres, more or less, located across Route 460 from the Airport to Greenview Properties Airport, LLC., laid over from the July 11, 2006 meeting, was again presented and read, and on motion of Council Member Garrett, seconded by Council Member Seiffert, Council by the following recorded vote adopted the Resolution:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of Airport - General, Resolution #R-06-088 approving the sale and conveyance of a 9/10 acre lot, more or less, of City-owned Airport property on the east side of Wards Road across from the

Airport entrance to Campbell County, laid over from the July 11, 2006 meeting, was again presented and read, and on motion of Council Member Garrett, seconded by Council Member Seiffert, Council by the following recorded vote adopted the Resolution:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of Public Works – General, City Council Report #4 was considered. On motion of Council Member Garrett, seconded by Council Member Seiffert, Council by the following recorded vote adopted Resolution #R-06-095, as presented, adding Langhorne Road to Phase 1 of the Virginia Department of Transportation (VDOT) Midtown Connector project:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of Public Works – Water, City Council Report #5 was considered. On motion of Council Member Garrett, seconded by Council Member Seiffert, Council by the following recorded vote adopted Resolution #R-06-096, as presented, establishing availability fees for Millside Centre development for sewer and water service:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of Human Services – General, City Council Report #6 was considered. On motion of Council Member Garrett, seconded by Council Member Seiffert, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-06-097, as presented, amending FY 2007 City/Federal/State Aid Program Fund Budget and appropriating \$20,220, fully reimbursable, to continue the development of a Child Interview Center to address the significant needs of severely physically and/or sexually abused/neglected children in Lynchburg:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// Mayor Foster recognized Fleet Manager John McCorkhill for being named "Fleet Manager of the Year".

// In the matter of Community Planning - Zoning Amendments, a public hearing was held regarding City Council Report # 7 outlining the petition of C S Door Service, LLC to rezone approximately .33 acres at 1000 Miller Park Square from B-3, Community Business District (Conditional) to B-3, Community Business District (Conditional) to amend previously approved proffers. City Planner Tom Martin provided a brief summary of the petition. Donna Salvia requested approval of the rezoning request. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Gillette, seconded by Council Member Helgeson, Council by the following recorded vote adopted Ordinance #0-06-098, as presented, granting the rezoning petition:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of Community Planning - Zoning Amendments, a public hearing was held regarding City Council Report # 8 outlining the petition of EE, LLC, to rezone approximately 106 acres from R-C,

Conservation District, R-3, Medium Density, Two-Family Residential District, and R-4, Medium-High Density, Multi-Family Residential District to B-5, General Business District (Conditional) at 129, 305, 317, 415, 509 and 607 McConville Road to allow the construction of an approximately 1,000,000 square feet commercial shopping center. Due to the large number of individuals present to speak to the zoning petition, City Council agreed to waive the normal time limits for zoning petitions and to allow each individual 3 minutes to speak and a group representative 5 minutes to speak.

// Mayor Foster made the following statement...I am the Chief Operating Officer of the Alliance for Families and Children. In the past, W C English Foundation has made donations to the Alliance for its Ways to Work Program. However, I have been advised by the City Attorney that the fact the English Foundation made donations to the Alliance does not create a conflict of interest under the Virginia Conflict of Interests Act. Even though the English Foundation has made donations to the Alliance, I am able to participate in this matter fairly, objectively, and in the public interest. Therefore, I will participate in the discussion of and will vote on this zoning petition.

// City Planner Tom Martin provided a summary of the rezoning petition stating that the Planning Commission recommended approval of the rezoning petition because the petition agrees with the Comprehensive Plan which recommends regional commercial and conservation land uses for the subject property. Mr. Martin also noted that the voluntarily submitted proffers adequately address development concerns associated with the petition. Mr. Martin went on to say that the Planning Commission did discuss several issues associated with the petition, i.e., displacement of existing residents, environmental impact, traffic impact, and overall design of the shopping center. Mr. Martin also noted that the City did conduct a traffic study of the Rt. 221-501 Expressway intersection which includes several alternatives and that the City has chosen to pursue alternative four as outlined in the study. Mr. Raymond Booth, representing the petitioner, along with Bruce Griffon, Eason Corporation, and Frank Cox, The Cox Company, outlined the petition and asked for approval. Eleven (11) individuals spoke in support of the petition citing increased jobs for area youth, increased revenue from taxes generated by the shopping center, and a commitment by the developer to provide financial assistance to assist mobile home residents in their relocation and remediation to the existing streams and waterways including Lynchburg College Lake. Twenty-four individuals spoke in opposition and a petition was presented signed by a number of individuals expressing opposition to the rezoning petition citing the following concerns: loss of open space, negative impact on small locally owned businesses, increased traffic, displacement of residents in Westgate Mobile Home Park, commercial development adjacent to residential neighborhoods, increased crime, and environmental concerns including the impact on adjacent streams and Lynchburg College Lake. There was no one else present who wished to speak to this item, and the public hearing was closed. Several Council Members commented regarding the complicated issues surrounding the proposed rezoning petition and agreed to schedule this item for further discussion at the September 26 work session. City Attorney Walter Erwin informed City Council that they may want to continue the public hearing to allow Council to accept any amendments to the proffers that may be offered

in the future by the developer. Following discussion, City Council agreed to reopen and to continue the public hearing regarding this rezoning petition indefinitely.

// At 10:29 p.m., City Council recessed the meeting for a brief break. The meeting was reconvened at 10:46 p.m.

// In the matter of Property/Sheriff, a public hearing was held regarding City Council Report #9 regarding adopting a Resolution authorizing the City Manager to execute a deed to transfer three parcels of land located at the intersection of Madison Street and Ninth Street to the Blue Ridge Regional Jail Authority. City Manager Kimball Payne provided a brief summary of the request. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Gillette, seconded by Council Member Johnson, Council by the following recorded vote adopted Resolution #R-06-099, as presented, authorizing the City Manager to execute a deed to transfer three parcels of land located at the intersection of Madison Street and Ninth Street to the Blue Ridge Regional Jail Authority:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster

7

Noes:

0

// In the matter of Schools/Public Works – General, a public hearing was held regarding City Council Report #10 regarding adopting a Resolution authorizing the City Manager to execute a utility easement/right-of-way with Appalachian Power Company allowing access to City-owned property to install underground service at Heritage High School Field House. City Manager Kimball Payne provided a brief summary of the request. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Garrett, seconded by Council Member Seiffert, Council by the following recorded vote adopted Resolution #R-06-100, as presented, authorizing the City Manager to execute a utility easement/right-of-way with Appalachian Power Company allowing access to City-owned property to install underground service at Heritage High School Field House:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster

7

Noes:

0

// In the matter of Budget, a public hearing was held regarding City Council Report #11 regarding amending the FY 2007 Operating Budgets for the General, Water, Sewer, Solid Waste, Fleet, Asset Forfeiture, Technology, Community Development Block Grant, Home Investment Partnership, and City Capital Projects Funds to reflect the carry forward of appropriations for ongoing activities that were not expended in FY 2006, and to appropriate funds for necessary expenditures since the FY 2007 budget was adopted. Director of Financial Services Donna Witt provided a brief summary of the request, stating that the proposed Ordinance has been revised to correct some clerical errors mentioned at the earlier work session. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Seiffert, seconded by Council Member Gillette, Council by the following recorded vote introduced and laid over to a later meeting for final action Ordinance #O-06-101, as revised, amending the FY 2007 Operating Budgets for the General, Water, Sewer, Solid Waste, Fleet,

Asset Forfeiture, Technology, Community Development Block Grant, Home Investment Partnership, and City Capital Projects Funds to reflect the carry forward of appropriations for ongoing activities that were not expended in FY 2006, and to appropriate funds for necessary expenditures since the FY 2007 budget was adopted:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of Central Virginia Mental Health, City Council Report #12 regarding approving the Central Virginia Community Services FY 2007 Performance Contract was considered. Council Member Gillette stated that he has a contractual relationship with the Central Virginia Community Services Board of less than \$10,000, that the action that is being requested will in no way impact his business, and that although he believes that he is able to participate and vote on this matter fairly, objectively and in the public interest, he would still prefer to abstain from voting on this item. On motion of Council Member Helgeson, seconded by Council Member Johnson, Council by the following recorded vote adopted Resolution #R-06-102, as presented, approving the Central Virginia Community Services FY 2007 Performance Contract:

Ayes: Dodson, Garrett, Helgeson, Johnson, Seiffert, Foster 6

Noes: 0

Abstention: Gillette 1

// In the matter of Public Works - Water, City Council Report #13 was considered. On motion of Council Member Helgeson, seconded by Council Member Gillette, Council by the following recorded vote adopted Ordinance #0-06-103, as presented, amending Sections 34-4 and 39-27 of the City Code to remove caps on water and sewer availability fees for multifamily developments:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of City Code, Mayor Foster reiterated that City Council Report #14 regarding amending the City Code relating to panhandling within the City has been removed from the agenda.

// In the matter of City Code, City Council Report #15 was considered. On motion of Council Member Garrett, seconded by Council Member Gillette, Council by the following recorded vote adopted Ordinance #0-06-104, as presented, repealing Section 7-35.1 of the City Code relating to dangerous or vicious dogs:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// On motion of Council Member Helgeson, seconded by Council Member Johnson, Council by the following recorded vote elected to hold a closed meeting to consider appointments to Council-appointed Boards and Commissions pursuant to Section 2.2-3711(A)(1), Code of Virginia (1950), as amended:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// The meeting was re-opened to the public.

// Council Member Johnson made the following motion:

WHEREAS, the Council of the City of Lynchburg has convened a closed meeting on this date, pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by City Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Lynchburg certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by Council.

The Motion was seconded by Council Member Garrett, and Council by the following recorded vote adopted the motion:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// In the matter of Appointments, and on nomination of Council Member Gillette, Council by the following recorded vote appointed Gerard E. Swienton to fill an unexpired term on the Planning Commission ending December 31, 2008:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Seiffert, Foster 7

Noes: 0

// The meeting was recessed at 11:30 P.M. to August 11, at 3:00 P.M., Council Chamber, to discuss City Council's next step following the Planning Commission's action on August 9 regarding an amendment to the City's Zoning Ordinance to require a conditional use permit in certain business districts.

Clerk of Council